IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

SUIT NO.3186 OF 1994

Messrs. R.R.Hosiery Private Limited. Plaintiffs
vs.
Messrs.Neha Enterprises. Defendants

Mr.R.D.Suvarna for the plaintiffs.

CORAM : ANOOP V. MOHTA,J.

DATED : 24th April, 2007

P.C.

The plaintiffs have filed the present Suit for recovery of the amount towards non-payment of the various bills for supply of diverse quantities of garments during the period from April and May 1991.

2. None appears for the defendants though served. Affidavit of service is filed on record. The matter has been on board since 1994. As listed under the caption of "undefended Suit", this Court on 20.12.2006 directed the plaintiffs to file affidavit of evidence and compilation of documents. The plaintiffs have filed a list of zerox copies of bills ranging from the period 11.4.1991 to 13.5.1991 which are taken on record and marked collectively as P-1 to P-8.

3. Admittedly, these are not original documents. By an

affidavit in lieu of evidence by one Mr.Chiranjilal Sharma, General Manager of plaintiffs has averred that duplicate copies of the aforesaid copies of bills are lost and/or destroyed in the water diluge which took place on 26.7.2005 when the plaintiffs' premises at Lower Parel, Mumbai was flooded with water. The plaintiffs therefore produced the zerox copies of the duplicate bills which were in the file of the Advocate and the same are listed at Sr. Nos. 1 to 8 in the compilation of the documents.

4. The requirement of law is that parties should submit the original documents to prove its case. However, there is also provision available under the as contemplated under Sections 63 and 65 of the Evidence Act. As in the present case primary evidence i.e. duplicate bills are not available and as destroyed, the secondary evidence need to be considered to ascertain the case of the plaintiffs, as contended in the plaint and in the documents. The contents of such documents though based on secondary evidence, in the facts and circumstances of the case, in the absence of any opposition and/or objection by any party, just cannot be overlooked. I am inclined to consider and take these documents on record to consider the merits of the matter.

5. The plaintiffs case has supported even the account as maintained in regular course by filing extract of account of plaintiffs ledger book. The plaintiffs have produced the original ledger account book which has been verified and zerox copies are marked as P-9. The last document is plaintiffs' Advocate notice dated 3.4.1992 which was issued for the said payment of Rs.92,345.14 for the recovery of price of the goods sold by the plaintiffs to the defendants together with interest thereon. The duplicate copy of the said notice dated 3.4.1992 is taken on record and marked as P-10. There is no postal acknowledgement due filed on record as it was also lost and not available on the record of the Advocate. The fact that there is no reply even to this notice, I am inclined to consider as averred and supported by the evidence of the plaintiffs General Manager through the present affidavit of evidence.

6. Taking all this into account, the plaintiffs have proved the contents of these documents which remained uncontroverted. The documents as it is in the facts and circumstances of the case, as backed up by the plaintiffs evidence, in my opinion, therefore, the plaintiffs have proved the case as averred.

7. The bills are dated 11.4.1991 to 13.5.1991. The defendants were required to make payment of the bills

within 90 days from the respective dates. In view of this, as the date of Suit is 28th June 1994, the present Suit is therefore within limitation.

8. Considering the facts and circumstances of the case and in view of the fact that the defendants are not appearing and even contesting the present Suit, I am of the view that the interest of rate as charged at the rate of 21% p.a. from 3.4.1992 to 31.5.1994 need to be reduced to 9% p.a. on principal amount from 1st June 1994 till payment and/or realisation in view of the recent Supreme Court judgement in **Krishna Bhagya Jala Nigam Ltd. vs. G.Harischandra Reddy & Anr., 2007 AIR SCW 527,** whereby it has been observed that after the economic reforms in our country the interest regime has changed and the rates have substantially reduced, as referred in para 11, need to be reduced to 9% p.a. for all the three stages. I am accepting this view and therefore inclined to grant interest at 9% instead of 21% at all stages.

9. The Suit is decreed as follows:

(i) The defendants is ordered and decreed to pay the plaintiffs a sum of Rs.92,345.14 together with interest from the due dates and further interest at the rate of 9% p.a. till payment and/or realisation.

(ii) Suit is allowed with no order as to costs.

[ANOOP V. MOHTA,J.]